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LETTER DATED 31 MAY 1998 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to transmit to you herewith a letter dated 27 May 1998 from Mr. Tariq Aziz, Deputy Prime Minister and Acting Minister for Foreign Affairs of Iraq, setting forth Iraq's position regarding the five-year work programme proposed by the secretariat of the United Nations Compensation Commission.

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

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Annex

Letter dated 27 May 1998 from the Deputy Prime Minister and Acting Minister for Foreign Affairs of Iraq addressed to the Secretary-General

With reference to the letter dated 2 March 1998 from the President of the Governing Council of the United Nations Compensation Commission in reply to our letter concerning the work programme prepared by the secretariat of the Commission (S/AC.26/1997/WP.1), we reiterate the position we set forth in our letter dated 13 January 1998 (S/1998/49), and would like to clarify some of the points made in the above-mentioned letter from the President of the Governing Council.

1. The mechanism requested, which the Commission secretariat refers to as an administrative tool, is in fact far from being that, and deals with the very essence of the technical work. The programme is not, as the secretariat claims, purely and simply an organizational and administrative process intended to settle claims over five years, since it aims to institute new proceedings with regard to the relationship between the secretariat and the panels of Commissioners, the claimants, and the legal experts.

2. We stress that the matters referred to in the aforementioned letter from the President of the Governing Council of the Commission which concern the work of the secretariat as set forth in the Provisional Rules for Claims Procedure (the Rules) (S/AC.26/1992/10) relate to the administrative obligations of the secretariat towards the Governing Council and the panels of Commissioners. These are very clearly specified in article 14 of the Rules. Furthermore, articles 15-17 concern the procedures to be followed with regard to claims not meeting the formal requirements, reports and views on claims and the categorization of claims. Articles 32 and 34 concern submission of claims to panels and assistance by the Executive Secretary, and also deal with formal procedures. Articles 37-41 cover the relationship of the secretariat with the panels of Commissioners and the Governing Council.

We consider that the matters covered in the Rules do not confer on the secretariat the right to consider the subject-matter of claims. Its role is restricted to the administrative preparation of claims and submitting those claims to the appropriate panel of Commissioners.

We therefore reiterate that the work programme is clearly intended to give the secretariat powers that are unrelated to its work and assign to it duties for which it is not responsible under the Rules. The provisions of paragraph 5 of the introduction to the work programme clearly state that the secretariat will report on claims submitted as required by article 16, implement the methodologies established by the panels to deal with groups of claims and inform the panels of the results of that implementation.

Paragraph 6 of the same programme states that, in order to minimize the need for the panels to request additional information from either the claimants or the Government of Iraq, the secretariat will prepare the claims for

submission to panels of Commissioners. This will free the panels to focus their efforts during the review period allotted by the Rules upon substantive issues and decisions.

Paragraph 7 provides that external valuation and other experts will assist the panels with the valuation of losses, and may also assist the secretariat in preparing claims for submission to panels.

Part B, paragraph 9, states that various other operating procedures will require elaboration. They include procedures concerning the relationship between the secretariat and the panels of Commissioners, the Commission and the claimants, and the Commission and external experts.

Article 12, entitled "Article 14 assessment", provides that the secretariat may at the same time further prepare the claims for submission to panels. This may involve requesting additional information or evidence from various sources, including the claimants. In that effort, the secretariat may seek assistance from valuation and other experts.

It is clear from even a superficial reading of the Rules and the new work programme that the programme is intended to institute new procedures concerning the relationship between the secretariat and the panels of Commissioners, the Commission and the claimants, and the Commission and external experts. The programme is therefore transforming the secretariat's purely formal operational duties into objective legal work. To that end, it wishes to revise the Rules in order to give the secretariat wider powers to examine claims and carry out an objective valuation thereof, encroaching on the jurisdiction and duties of the panels of Commissioners. This is not permitted by the Rules. The scope of articles 37-41 does not exceed the formal administrative preparation of the work submitted by the panels to the Governing Council.

The President's letter stated that under the Rules, the panels of Commissioners are responsible for settling claims and estimating the volume of assistance to be provided by the secretariat. Similarly, the amount of assistance provided as needed by external consultants should correspond to requests from the panels of Commissioners. These will vary according to the volume and complexity of claims. The panels of Commissioners have the authority to decide which of the valuation methodologies proposed by the external experts should be used with regard to claims which the panels consider should be paid. This being the case, what need is there for a new programme, since the Rules meet requirements? Whereas article 14 of the Rules restricts the duties of the secretariat to making a preliminary assessment of the claims in order to determine whether they meet the formal requirements, article 12 of the work programme provides that the secretariat may at the same time further prepare the claims for submission to panels. This may involve requesting additional information or evidence from various sources, including the claimants. In that effort, the secretariat may seek assistance from valuation and other experts. This means that the secretariat wishes to be able to request additional information or evidence from various sources, whereas that is the responsibility of the panels of Commissioners. The Rules keep reiterating that a valuation of the claims in cooperation with valuation and other experts is one of the basic,

objective duties of the panels of Commissioners and is not a formal or administrative procedure.

3. With respect to the size of the contribution made by Iraq in cases involving unusually complex claims, Iraq has on several occasions already made clear its cautious position regarding the claims-settlement mechanism, and has repeatedly stressed that this mechanism contravenes the rules established by international law, cooperation between States, the principles of public law and the concepts of justice and equity on which those rules are based. We should like to refer yet again to the detailed clarifications submitted by Iraq to one of the panels of Commissioners in August 1996 while the case of the Kuwait Oil Corporation was under consideration. Iraq also made its position clear to the Governing Council in November 1996. The Security Council was informed of these matters in document S/1996/893. The truth of the matter is that the Government of Iraq has no role, however small, which allows it to respond to the allegations contained in claims, or to be present at hearings. It is unable to give its legal and objective opinion on claims, even when those are exaggerated. For example, whereas the Government of Iraq has replied to the reports, numbering 22 to date, prepared by the Executive Secretary and has had them reviewed by legal experts before replying to them individually in a legal and scientific manner, in accordance with the precepts of international law, we have seen no reference made to our replies in those reports. Furthermore, we have received no acknowledgement in this regard from the Compensation Commission. This gives the impression that the Commission is determined to disregard the role of Iraq and to allow it no effective participation. The Commission takes decisions on everything without involving Iraq. It is the Commission that decides which claims should be settled, who is authorized to submit a claim, what should be considered direct losses, and what constitutes sufficient proof. The Commission decides how to evaluate different types of damage and what sums should be paid in compensation. These measures create a legal screen which conceals the systematic subjugation of the Iraqi people. There are no reasonable grounds for this collective punishment of the Iraqi people. The system followed by the Compensation Commission constitutes a violation of the principle of the sovereign equality of States and cannot be justified as being intended to establish joint liability under international law.

In once again bringing this matter to your attention pursuant to your responsibilities under the Charter, the Government of Iraq considers that it would be a serious matter if such a programme was adopted. It would severely damage the interests of Iraq, exceeding as it does the mandate of the secretariat and even of the Governing Council of the United Nations Compensation Commission. Iraq requests the review of all incorrect practices that contravene the principles of international law, custom and international precedents on matters of compensation. It further requests that the Compensation Commission verify and scrutinize the accuracy of claims in a manner that completely accords with international law and the rules of justice and equity. If this is not done, the compensation process will become simply an organized operation to strip the Iraqi people of their property, which they desperately need in order

to rebuild their society and economy, which have been largely destroyed as a result of the unjust economic sanctions imposed upon them.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) Tariq AZIZ